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ACCOLADE LAND SDN BHD v. MASS RAPID TRANSIT CORPORATION SDN BHD & ORS

COURT OF APPEAL, PUTRAJAYA
ABDUL RAHMAN SEBLI FCJ
HASNAH MOHAMMED HASHIM FCJ
B MARY LIM JCA
[CIVIL APPEAL NO: W-01(IM)-184-05-2017]
10 DECEMBER 2019

C ***CIVIL PROCEDURE:*** *Striking out – Appeal – Appeal against striking out of claim – Oral contract – Lands planned to be developed compulsorily acquired for Mass Rapid Transport ('MRT') project – Developer withdrew objection to land acquisition after relying on representations that MRT line would be advantageous to development – Parties entered into oral contract – MRT line re-aligned bypassing developer's developments, lands and acquired lands – Developer suffered losses and*
D *commenced action based on breach of contract – Whether claim raised require resolution and determination – Whether causes of action sufficiently particularised – Whether plainly and obviously unsustainable case fit and proper to be struck out – Rules of Court 2012, O. 18 r. 19(1)(a), (b) & (d)*

E The appellant ('the plaintiff') had developed seven lots of land into a mixed housing and commercial project in four phases. After successfully selling units of the first phase and commencing works and construction on the same, the plaintiff discovered that that two of the seven lots would be compulsorily acquired for the Mass Rapid Transport project ('MRT project'). The plaintiff applied for judicial review proceedings, at the High Court, to challenge the
F acquisition but the application was dismissed. In a meeting between the plaintiff, the first and fourth defendants and Dewan Bandaraya Kuala Lumpur ('DBKL'), the first defendant, *inter alia*, represented that the MRT station and the Sungai Buloh to Putrajaya Line ('SBP Line') would be built on the land acquired from the plaintiff and this would be advantageous to the
G plaintiff as there would be accessibility from the direct link between the proposed MRT station to the plaintiff's development on the lands ('representations'). Based on these representations, the parties entered into a contract where the plaintiff agreed to (i) withdraw its objection to the acquisition of the lands; (ii) limit its claim to the value of the land acquired;
H (iii) exchange a piece of land with DBKL to integrate the plaintiff's development with the SBP Line and station; (iv) completely re-plan, re-design and delay its development on the lands; (v) forgo all time and costs incurred in planning and development; and (v) surrender further portion of the lands and share the costs for construction of a new slip road to allow public access to the South part of the lands. The first defendant, on the other
I hand, agreed to (i) build the MRT station for the SBP Line on a part of the

plaintiff's land which was being acquired; and (ii) induce and/or procure DBKL's agreement to consent and transfer a land from DBKL to the plaintiff to re-plan and re-design its development. As a result of the contract and/or representations, the plaintiff abandoned its development approvals and embarked on a fresh course to re-plan and re-design its development of the lands ('second development'). The events took a turn when the first defendant announced a change in the alignment of the SBP Line which, in the course, bypassed the plaintiff's developments, lands and even the acquired lands. This drastically affected the sales of the plaintiff's second development and there was a significant number of cancellations. Left with no other alternative, the plaintiff abandoned the second development and had to re-design a new development in order to mitigate its potential losses. The plaintiff commenced an action at the High Court against the defendants, on the grounds that (i) the first defendant made the representations despite knowing they were untrue; (ii) the contract was carried out as agreed between the parties and, as a result, the plaintiff suffered losses and damages due to the breach; (iii) the second and third defendants, despite their full knowledge of the agreement between the parties, had interfered with and induced the first defendant to breach its contract with the plaintiff. The defendants filed separate applications to strike out the plaintiff's claim, pursuant to O. 18 r. 19(1)(a), (b) or (d) of the Rules of Court 2012 ('ROC'). The applications were allowed on the grounds, *inter alia*, there was no written documentation of the representations allegedly made by the first defendant to prove the existence of an oral contract. Hence, the present appeal in respect of the first defendant.

Held (allowing appeal with costs in cause)
Per Mary Lim JCA delivering the judgment of the court:

(1) The High Court Judge ('HCJ') erred in his exercise of discretion. Much of His Lordship's comments were unwarranted, unnecessary and, at times, speculative. The underlying principles that are applicable to an application to strike out any claim or pleading, under O. 18 r. 19 of the ROC, do not make any distinction between the nature and the character of the contract, be it oral or written. What is required is that a cause of action must be clearly pleaded according to the rules of pleading. The success or merits of that cause of action is not for determination at this interlocutory stage unless it is plainly and obviously unsustainable. The plaintiff's case against the first defendant was not a plainly and obviously sustainable case fit and proper to be struck out. (paras 8 & 18)

(2) The first defendant responded to the claim by filing a substantial defence. The defence and the plaintiff's claim raised pleas and matters of fact which necessarily involved and would require resolution and determination based on evidence and principles of law. These causes and defences concerned questions of fact, not at all suitable in the manner summarily considered and disposed of by the HCJ. The

affidavits and documents filed in support plainly showed that there was substantial exchange between the parties at the material time on the matters raised by the plaintiff. The issue of why there was no written documentation to corroborate the plaintiff's claim of an oral contract was for the plaintiff to explain at the trial. However, the events, as pleaded and gleaned from the affidavits, were more than adequate to show that the plaintiff had a reasonable cause of action founded on an oral contract. (paras 21-24)

(3) Oral contracts are, by their very nature, oral and, if proved, are enforceable in law barring any valid defence. There is no requirement that all contracts have to be reduced into writing. To require contemporaneous documents, especially in defence to an application to strike out, would be to change the very precepts of such contracts, regardless the amounts at stake. (para 20)

(4) The pleaded case of the plaintiff did not cite a bare oral agreement. Instead, the plaintiff pleaded details of that oral agreement, including the identities of the personalities representing the first defendant who allegedly were involved in making the representations that lie at the heart of the plaintiff's claim. The when and how such representations were made, that they were in the presence of third or other parties; the relevant circumstances and representations had been pleaded. Significantly, the plaintiff pleaded its reliance on, and its understanding of those representations, as manifested by its conduct in re-drawing development plans, terminating sale and purchase agreements with payments or compensations to the affected purchasers, and the re-submission of applications for development orders from DBKL. (para 19)

(5) The causes of action were sufficiently particularised such that the first defendant, or any of the other defendants, would not be caught by surprise, be embarrassed, prejudiced or find itself unable to meet the plaintiff's case. The first defendant's defence was evidence of that conclusion. The plaintiff's case against the first defendant was reinstated and the case was remitted to the High Court for trial before another judge. (paras 26 & 29)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Lee Nyan Choi v. Voon Noon [1978] 1 LNS 94 FC ***(refd)***

Sang Lee Company Sdn Bhd v. Suburamaniam Mayawan & Ors [2011] 1 CLJ 167 CA ***(refd)***

Seruan Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Darul Makmur & Anor [2016] 3 CLJ 1 FC ***(refd)***

Tan Sri Halim Saad v. Tan Sri Nor Mohamed Yakcop & Ors [2014] 4 CLJ 232 HC ***(refd)***

Tan Swee Hoe Co Ltd v. Ali Hussain Bros [1979] 1 LNS 113 FC ***(refd)***

Legislation referred to:
Contracts Act 1950, ss. 24(a), (b), (d)
Land Public Transport Act 2010, s. 84(1), (6)
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (c), (d)

For the appellant - Malik Imtiaz Sarwar & Foo Joon Liang, Lee Xin Div & Khoo Suk Chyi; M/s Gan Partnership
For the 1st respondent - Steven Thiru & Gregory Das; M/s Steven Thiru & Sudhar Partnership

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: WA-21C-3-05-2016 (overruled).]

Reported by Najib Tamby

JUDGMENT

Mary Lim JCA:

[1] The appellant who was the plaintiff at the High Court filed four separate appeals following the High Court's decision allowing effectively, as it were, its whole claim against each of the four defendants to be struck out upon the application of those defendants under O. 18 r. 19(1)(a), (b), (c) and (d) of the Rules of Court 2012. Prior to the hearing, two of the appeals were withdrawn, namely Appeal Nos: W-01(IM)(C)-185-05-2017 and W-01(IM)(C)-186-05-2017, appeals against the second and third defendants. On the morning of the remaining two appeals, the plaintiff withdrew the appeal against the fourth defendant in Appeal No: W-01(IM)(C)-187-05-2017. That appeal was accordingly struck out on agreed costs leaving the last appeal against the first defendant. After hearing submissions from the parties amplifying and highlighting their written submissions filed earlier, we unanimously allowed the plaintiff's appeal. We will refer to the parties as they were at the High Court.

[2] This is a summary of the plaintiff's case as it appears in the statement of claim, with particular focus on the first defendant given that the only appeal before us for consideration is the High Court's order allowing the first defendant's application to strike out the plaintiff's claim as against the first defendant:

(i) plaintiff is the owner and developer of seven lots of land located in the Mukim of Petaling, Daerah Kuala Lumpur (the lands);

(ii) in 2009, the plaintiff decided to develop the lands into a mixed housing and commercial development project (the project);

(iii) the plaintiff thus submitted an application to Dewan Bandaraya Kuala Lumpur (DBKL) and DBKL granted a conditional development order for the development of the project in four phases;

(iv) plaintiff launched sales of phase 1 and units were sold;

(v) earthworks and construction began on phase 1;

(vi) in early 2012, the plaintiff learnt that two of the seven lots upon which were planned construction of service apartments and shop-lots would be compulsorily acquired; specifically for "Projek MYRapid Transit Lembah Kelang Jajaran Sungai Buloh-Kajang", part of a public transport network project under the Klang Valley Mass Rapid Transport Project (PRT project);

(vii) plaintiff met with the first and fourth defendants on 3 May 2012 and 9 May 2012 expressing its concerns that the proposed acquisition would disrupt and delay the development of the project;

(viii) at those meetings, first defendant gave the plaintiff the impression that the acquisition was for the Sungai Buloh to Putrajaya Line (SBP Line), and was shown a site plan to this effect; and not for the Sungai Buloh Kajang Line (SBK Line);

(ix) plaintiff filed judicial review proceedings in June 2012 (Kuala Lumpur High Court OS No: 25-126-06-2012) to challenge the acquisition taking the position that the acquisition was for a purpose larger than was necessary; that the acquisition was defective as it was actually not for the Sungai Buloh Kajang Line; that its development which was already planned, designed and in an advanced stage of being put into effect would be significantly affected;

(x) the application for judicial review was dismissed and the plaintiff appealed;

(xi) at a meeting on 30 January 2013 between the plaintiff, first and fourth defendants and DBKL, the first defendant *inter alia* represented that the MRT station and SBP Line would be built on the land acquired from the plaintiff, that this would be a service to the people and advantageous to the plaintiff as there would be more accessibility from the direct link between the proposed MRT station to the plaintiff's development on the lands;

(xii) the plaintiff alleged that there was consequently a contract entered between the parties wherein based on those representations, the plaintiff agreed to:

(a) amicably withdraw its objection to the acquisition of the relevant portion of the lands;

(b) limit its claim to the value of the lands acquired;

(c) exchange a piece of land with DBKL so as to integrate the plaintiff's development with the SBP Line and station (land swap);

(d) completely re-plan, redesign and delay its development on the lands;

(e) forgo all time and costs incurred in planning and development thus far;

(f) surrender a further portion of the lands and share the costs for construction of a new slip road to allow public access to the South part of the lands;

and the first defendant agreed to:

(g) build the MRT station for the SBP Line on a part of the plaintiff's land which was being acquired; and

(h) induce and/or procure DBKL's agreement to consent and transfer Lot 38027 from DBKL to the plaintiff to re-plan and redesign its development;

(xiii) plaintiff proceeded to refund deposits paid by purchasers together with 10% of the purchase price for units affected by the acquisition;

(xiv) plaintiff's consultants and the first and fourth defendants took steps to plan on the positioning of the supporting columns; traffic flow and connect the building level of the plaintiff's development with that of the SBP Line and station;

(xv) on 10 October 2014, alignment of the SBP Line and MRT station was publicly announced and displayed by *inter alia*, the first defendant;

(xvi) plaintiff had a legitimate expectation that the SBP Line with the MRT station would be constructed in accordance with the representations by the first defendant and as agreed upon by the parties;

(xvii) as a result of the contract and/or representation, conduct, plaintiff abandoned its development approvals and embarked on a fresh course to re-plan and redesign its development of the lands (second development) consisting of phases 1a, 1b, 2a, 2b and 2c;

(xviii) only phase 1 of the second development was approved by DBKL with the remaining phases held in abeyance pending approval of the land swap;

(xix) on 6 January 2015, the plaintiff obtained a development order for the second development;

(xx) in early June 2015, the first defendant announced a change in the alignment of the SBP Line to reroute it through Bandar Malaysia township thereby completely bypassing the plaintiff's development, land and even the acquired land;

(xxi) this immediately and drastically affected the sales of the plaintiff's second development with "a very significant number of cancellations";

(xxii) by letter 12 June 2015, the plaintiff's solicitors put the first and second defendants on notice that the realignment is a breach of the agreement and a breach of the first defendant's representations; and demanded the first defendant refrain from changing the alignment as originally designated with a station adjacent to the plaintiff's lands and development;

(xxiii) by letter dated 30 December 2015, the first defendant denied the plaintiff's claim and demand;

(xxiv) plaintiff claimed it had no alternative but to abandon the second development, redesign a new development in order to mitigate its potential losses (third development).

[3] The plaintiff, *inter alia*, alleged that the first defendant made its representations knowing that the representations or the facts represented therein are untrue; without any belief in the truth of the representations; without ascertaining or verifying the truth of such representations. Further and in the alternative, the plaintiff alleged that the first defendant was in breach of its duty of care owed to the plaintiff when it failed to and/or omitted to ensure that the contract was entered into with the necessary authority and approval; and that the contract was carried out as agreed between the parties. The plaintiff claimed that it consequently suffered loss and damage by reason of such breach.

[4] The defendants are as follows:

(i) second defendant is the statutory body established under the Suruhanjaya Pengangkutan Awam Darat Act 2010 with specific functions under that Act and the Land Public Transport Act 2010;

(ii) third defendant is the Minister designated under those two Acts of Parliament to decide and/or to approve amongst others, matters relating to policy and planning on land public transport;

(iii) fourth defendant is the joint venture company between MMC Corporation Berhad and GAMUDA Berhad appointed as the Project Delivery Partner of the first defendant in respect of the Klang Valley MRT Sungai Buloh-Putrajaya Line.

[5] The plaintiff had alleged that the second and third defendants were fully involved in and had knowledge of the agreement between the plaintiff and the first defendant and of the first defendant's contractual obligations; that these defendants had interfered with and had induced the first defendant to breach its contract with the plaintiff.

[6] The defendants filed separate applications to strike out the claim pursuant to O. 18 r. 19(1)(a), (b) or (d) of the Rules of Court 2012. The first defendant further sought to strike out specific paragraphs of the plaintiff's amended reply to its defence. The applications were allowed *in toto*, and the plaintiff filed four appeals.

[7] At the hearing of these appeals, the plaintiff withdrew the appeals in respect of the second to the fourth defendants but pressed on in respect of the first defendant. It was urged upon us that following the withdrawals of these appeals, certain grounds in the memorandum of appeal, namely paras 12.1 and 13 to 16 were no longer available – see notice of motion in encl. 7a. After hearing arguments, we struck out those grounds.

[8] As for the substantive appeal, we heard full submissions before we allowed the appeal, finding that the learned judge had erred in his exercise of discretion. We were unanimous in our conclusion that the plaintiff's case against the first defendant was not a plainly and obviously unsustainable case fit and proper to be struck out.

[9] While accepting that there are the broad principles of striking out and the approach to be taken as exemplified in the Federal Court decisions of *Lee Nyan Choi v. Voon Noon* [1978] 1 LNS 94; [1979] 2 MLJ 28 and *Seruan Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Darul Makmur & Anor* [2016] 3 CLJ 1; the learned judge opined that these principles had to be "balanced with the other principles of law with regard to striking out, in that if the pleadings are vague and are obviously unsustainable and a complete non-starter then the court would not allow its process to be abused", or if the claim is frivolous and vexatious and lacking in material particulars, citing the *locus classicus* of *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7.

[10] In the learned judge's opinion, this was "more so when the main plank of the plaintiff's claim was founded upon a breach of an oral contract resulting in a claim of more than RM300 million, the court would be impelled to investigate if there are contemporaneous documents that would lend support to the plaintiff's oral contract. Otherwise, each time a plaintiff claims under a breach of an oral contract and a massive sum as damages, a defendant would have no choice but to endure the process and protraction of a full trial for its vindication. That would bring the court's process into disrepute. Whilst accepting that the court's summary powers to strike out a claim is a drastic one, the court would at the same time discern if there is reasonable claim that ought to proceed to trial, though it may be weak, such that even a bruised reed will not be broken nor a smoldering wick snuffed out" – see *Sang Lee Co Sdn Bhd v. Subramaniam Mayawan & Ors* [2011] 1 CLJ 167; [2011] 5 MLJ 374; *Tan Sri Halim Saad v. Tan Sri Nor Mohamed Yakcop & Ors* [2014] 4 CLJ 232; [2014] 11 MLJ 379;

[11] The court then proceeded on a strenuous exercise of examining the contemporaneous documents before concluding that there was no evidence of any oral contract, that the existence of such a contract was "highly improbable and indeed inherently incredible so as to be obviously unsustainable and should be struck out". According to the learned judge, "matters of this nature where so much is at stake, one must not shy away from stating in writing what one has bargained for"; that because the plaintiff was represented by solicitors at the material time of the judicial review proceedings, "surely they would have advised that the agreement and contract be reduced into writing. Better still that the consideration for the withdrawal of the appeal be stated in the order for withdrawal itself or be annexed to the terms of the withdrawal."

[12] The learned judge continued in that vein and in fairly strong language said that he found it "telling" the "fact that there is (*sic*) documents tending to show or lend support to that"; that "it cries out for an explanation and the only explanation is that consistent with the fact that there was no oral contract that the SSP Line was to pass through the plaintiff's land"; that he "cannot believe that a developer like the plaintiff would leave such an agreement to be an oral one and live with that, when in reality the stakes are so high to the tune of RM300 million. If a developer's exposure and risk is that massive, surely that they would have insisted on some written terms no matter how sketchy or superficial and it would be naive to settle for a so-called oral contract and misrepresentation."

[13] The learned judge also found the plea of misrepresentation wanting in that the failure to plead the particular type of misrepresentation meant that the court "is not able to award the appropriate remedy to the plaintiff in respect of this claim"; that the claims of fraudulent and negligent misrepresentation were raised for the first time in the plaintiff's amended reply in which case the claim was obviously unsustainable and ought to be struck out. Further, the plaintiff failed to plead the essential facts to substantiate a claim for any of the three types of misrepresentation.

[14] The learned judge also agreed with the first defendant that even if there was an oral contract, such a contract:

(i) was a contingent contract where the pre-conditions were not met; and

(ii) would be void under ss. 24(a), (b) and (d) of the Contracts Act 1950 as it requires the first defendant to guarantee the construction of an MRT Line and station on the plaintiff's lands.

[15] On the claim in negligence, the learned judge opined in quite strong terms that the plaintiff's claim "was so deficient of details and particulars as to make it defective", commenting that "[O]ne cannot help getting the impression that the plaintiff was scrapping the barrel to found some cause of action should its claim in contract [*sic*] fails and this simply would not do";

that the plaintiff was not "permitted to pursue such a course", that is, "to supplement its statement of claim by including in its reply, matters that should have been pleaded in the statement of claim." The learned judge agreed with the first defendant that it was not mandatory that the first defendant seeks further and better particulars, that it was not for the plaintiff to insist on such a course when the plaintiff had "done the exact opposite by forgoing its opportunity to amend its statement of claim and has instead elected to cure the defects in its pleadings through its reply." Consequently, the learned judge allowed the first defendant's application and struck out the claim.

[16] In essence, the learned judge required written documentation of representations allegedly made by the first defendant before His Lordship would be convinced on the existence of an oral contract. His Lordship reasoned that this requirement was particularly necessary given the magnitude of the cost or potential loss to the plaintiff, and having in view the identities of the parties, and the involvement of the solicitors at the material time.

[17] Before expressing our considerations on the matters under appeal, we must register by way of preface the observation that in no way, whether expressly or by implication, are our deliberations here intended to be our views on the merits of the substantive issues raised in the pleaded case of the respective parties. The merits question is necessarily for determination by the trial judge.

[18] As for the reasoning of the learned judge as set out above, with respect, we cannot agree with His Lordship, and we find much of his comments unwarranted, unnecessary and at times speculative. The underlying principles that are applicable to an application to strike out any claim or pleading under O. 18 r. 19 of the Rules of Court 2012 do not make any distinction between the nature and the character of the contract, whether it be oral or written. What is required is that a cause of action must be clearly pleaded, according to the rules of pleading. The success or merits of that cause of action is not for determination at this interlocutory stage unless of course, it is plainly and obviously unsustainable. And, in this appeal, we are unanimous that it is neither plain nor obvious that the plaintiff's claim on any plank is unsustainable.

[19] The pleaded case of the plaintiff does not cite a bare oral agreement. Instead, the plaintiff pleads details of that oral agreement, including the identities of the personalities representing the first defendant who allegedly were involved in making the representations that lie at the heart of the plaintiff's claim, that a certain David Loo, the first defendant's company secretary and Azhar Abdul Hamid, the first defendant's then chief executive officer, attended meetings between the parties and made the representations complained of. The when and how such representations were made, that they were in the presence of third or other parties; the relevant circumstances and

representations have been pleaded. Significantly, the plaintiff has pleaded its reliance on and its understanding of those representations as manifested by its conduct in redrawing development plans, terminating sale and purchase agreements with payments or compensations to the affected purchasers, and the resubmission of applications for development orders from DBKL. Quite telling was the matter of the land swap that is not in dispute.

[20] Oral contracts are by their very nature, oral. And, oral contracts, if proved are enforceable in law barring any valid defence. There is in fact no requirement that all contracts have to be reduced into writing – see *Tan Swee Hoe Co Ltd v. All Hussain Bros* [1979] 1 LNS 113; [1980] 2 MLJ 16. To require contemporaneous documents, especially in defence to an application to strike out and for the reasons articulated by the learned judge would be to change the very precepts of such contracts, regardless the amounts at stake.

[21] Further, the first defendant has responded to the claim by filing a substantial defence, *albeit* with reservations, taking the stand of unsustainability of the claim, non-existence of such an oral contract; that the agreement was in respect of a different line. Alternatively, even if there was such a contract, it was a contract conditional upon the approval of the second defendant and the consent of the third defendant. The consent of the third defendant is required under the Land Public Transport Act 2010 (LPTA) and the Land Public Transport Commission Act 2010. The first defendant has also contended that the contract was in essence a lobbying contract and thereby unenforceable on grounds of public policy.

[22] All these defences and of course, the plaintiff's claim, raise pleas and matters of fact which necessarily involve and will require resolution and determination based on evidence and principles of law. These causes and defences concern questions of fact, not at all suitable for resolution in the manner summarily considered and disposed of by the learned judge. What is illuminating are the following facts which appear to be not in controversy; namely:

(i) two plots of the plaintiff's lands were compulsorily acquired in connection with the MRT project on 12 October 2011;

(ii) the relevant part of the MRT project concerns the construction of a railway network comprising two lines, the SBK Line connecting Sungai Buloh to Kajang, and the SSP Line connecting Sungai Buloh to Serdang;

(iii) meetings were held between the parties in this appeal;

(iv) a land swap where the plaintiff surrenders part of its land in exchange of a specific lot in order to consolidate its development with the SSP Line was anticipated (integrated project);

(v) first defendant agreed to the construction of a slip road access built partly on the plaintiff's land and partly on the acquired lots;

(vi) the plaintiff submitted fresh applications for development order incorporating the integrated project;

(vii) the first defendant supported the plaintiff's application for the land swap confirming the land swap and the position of the slip road access;

(viii) the plaintiff was granted conditional approval pursuant to s. 84(1) of LPTA.

[23] In any event, having perused the affidavits filed and the documents filed in support, it is plain to us that there was substantial exchange between the parties at the material time on the matters raised by the plaintiff in its statement of claim. Contrary to the learned judge's conclusion that there was no correspondence or mention anywhere in the correspondence exchanged on the matter of the railway line linking Sungai Buloh to Putrajaya, the records show or at least indicate that there was such an issue, of such a line to Putrajaya. The plaintiff exhibited correspondence exchanged between the parties which reflect the presence of some agreement; see for instance the plaintiff's letter dated 29 May 2012 to the first defendant wherein the plaintiff stated:

> Further, our client also understands the nature of the acquisition and is desirous in co-operating with MRT so that the **future MRT Line to Putrajaya may be protected**. However ...
>
> ...
>
> Our client also wish to reiterate that if the land acquisition were to be executed in a proper manner, i.e. **when the Putrajaya MRT Line is approved**, then our client would benefit in the same manner as listed above. In the event that a new *Warta* is obtained it would probably be impossible for the **Putrajaya MRT Line** to go through our client's land as projects would either be substantially completed or already completed and our client would have made the profits as projected by them.
>
> (emphasis added)

[24] The above and the conduct and steps taken by the plaintiff following the alleged representations cannot be ignored, they are events that took place and form the essential factual matrix of the plaintiff's case. The issue of why there are no written documentation to corroborate the plaintiff's claim of an oral contract is for the plaintiff to explain at the trial; but in our view, the above events as pleaded and gleaned from the affidavits filed are more than adequate, in our view, to show that the plaintiff has a reasonable cause of action founded on an oral contract. Parties including the plaintiff would not go to the lengths that it did but for, at this point at least, the holding out and

representations from persons with authority or ostensible authority to speak for the first defendant. Such persons being no less than the CEO and the company secretary of the first defendant. The meetings are not denied; only the purported representations themselves, their meaning and intent.

[25] On the matter of the contract being contingent, learned counsel for the plaintiff submitted that the plaintiff accepts the contention that the final approval of the third defendant was a condition precedent under s. 84(6) of the LPTA. Its argument however is that it was up to the first defendant to obtain the approval. And the fact that the first defendant failed to obtain the approval does not alter or diminish that obligation; neither can the first defendant turn round to argue that the contract is void or unenforceable because the condition precedent has not been fulfilled due to its own failure to procure that approval. Again, this is a valid issue requiring examination at trial, and not in the summary manner and through an exchange of affidavits.

[26] We further find that the causes of action are sufficiently particularised such that the first defendant, or any of the other defendants will not be caught by surprise, be embarrassed, prejudiced or find itself unable to meet the plaintiff's case. The first defendant's defence is evidence of that conclusion.

[27] The above reasons apply equally to the claim founded in misrepresentation and negligence.

[28] It has been repeatedly cautioned that it is not the success or otherwise of the claim or the defence that a summary process is engaged to stop this access to justice. It requires much more. On the pleaded case and for the reasons submitted by learned counsel for the plaintiff, we are amply satisfied that this is not a plain and obviously unsustainable case that must be struck out summarily.

[29] For all the foregoing reasons, there are obvious merits in this appeal. The learned judge was plainly in error in his application of the principles of striking out under O. 18 r. 19 of the Rules of Court 2012. We find sufficient merit in the appeal to warrant appellate intervention. The appeal is therefore allowed with costs in the cause and the decision of the High Court is set aside. The plaintiff's case against the first defendant is reinstated and the case is remitted to the High Court for trial before another judge.